

**Michigan Department of Education- Office of Field Services**  
**Clarification Regarding the Alternative Language Program Requirements**

*"Where inability to speak and understand the English language excludes national origin- minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." From the OCR May 25, 1970 Memorandum.*

*In 1974, the Supreme Court upheld this requirement to take affirmative steps in the **Lau v. Nichols decision, 414 U.S. 653 (1974)**. The May 25th Memorandum, as affirmed by Lau, continues to provide the legal standard for the Education Department's (the Department) Title VI policy concerning discrimination on the basis of national origin.*

*Under Title I, Part A, funds must supplement, and not supplant non-Federal funds. **(Section 1120A (b) of the ESEA)**. In order for federal funds to be considered supplemental,*

**a. In a Schoolwide Program School:**

Title I funds must be used only to supplement the amount of funds that would, in the absence of the Title I funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency. **[Section 1114(a)(2)]**

**b. In a Targeted Assistance school:**

To avoid supplanting, a Title I school operating a targeted assistance program *may not* use Title I, Part A funds to meet Federal, State, or local law requirements for limited English proficient (LEP) children, or children with disabilities.

*Under Title III, Part A, funds must supplement, and not supplant other Federal, State, and local funds. **(Section 3115 of the ESEA)***

In order for Title III to be considered supplemental, Title III funds must be used to supplement **the level of Federal, State and local funds** that, in the absence of Title III funds, would have been expended for programs for limited English proficient (LEP) students and immigrant children and youth **(ESEA Sec.3115(g))**. One of such program is Office of Civil Rights' requirement of districts to provide alternative language program to English learners **(Title VI of Civil Rights Act, 1964; Lau vs. Nichols, 1974)**.

In summary, federal funds must be used to supplement **the level of Federal, State and local funds** that, in the absence of Title funds, would have been expended for programs for limited English proficient (LEP) students **(i.e. the Alternative Language Program)**. To determine if a cost is supplemental, use these four guiding questions to make supplement, not supplant determinations:

1. *What is the instructional program/service provided to all students?*
2. *What does the LEA do to meet **Lau** requirements?*
3. *What services is the LEA required to provide by other Federal, State, and local laws or regulations?*
4. *Was the program/service previously provided with State, local, and Federal funds? **[ESEA Sec. 3115(g); 1120A and 9021]***

All local educational agencies receiving any supplemental state or federal funds are required to **demonstrate how they are using general funds to support ELs** by completing a template (in MEGS Plus) for "Alternative Language Program Provided to English Learners" in the Program Information section in the View/Edit menu. Districts that don't have English Learners during the submission of the consolidated application to MEGS Plus should have a plan in place for new EL enrollees, and need to submit the Alternative Language Program template with the application.

#### **Adequate Services:**

Teachers of English Learners (ELs) must have the qualifications and preparation necessary to deliver evidence-based instructional design **[ESEA Sec. 3115]** that would help ELs develop proficiency in English while meeting State academic content and student academic achievement standards **[ESEA Sec. 3116]**.

Local Educational Agencies (LEAs) are expected to have necessary teachers to implement their chosen EL/Title III program properly within a reasonable period of time, and have documentation of proper certification / license (endorsements) for instructional staff of ELs. **Title VI of the Civil Rights Act of 1964 - OCR Guidelines and [ESEA Sec. 3115]**.

English learners should not be getting instruction from aides (paraprofessionals) rather than teachers **34 C.F.R.** Additionally, LEAs may not relegate LEP/EL students to second-class status by indefinitely allowing teachers without formal qualifications to teach them while requiring teachers of non-LEP students to meet formal qualifications. **34 C.F.R. § 100.3(b) (ii). [4]**.

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